IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.741 OF 2007

M/s.Economy Refrigeration Ltd. ...Petitioners

Versus

Blue Star Agro & Winery (India)
Pvt.Ltd. ...Respondents

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Mr.K.A.Sampat i/b Mr.Vinod B.Singh for Petitioners.

Mr.Farhan Dubhash i/b RES Legal for Respondents.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 12, 2007.

P.C.

1. Heard Counsel for the parties. Perused the pleadings and documents on record.

2. The Petitioners' claim is based on goods sold, delivered and supplied. According to the Petitioners, the Respondent Company has failed to pay sum of Rs.27,04,090/- (Rupees Twenty-seven Lakhs Four Thousand Ninety) in relation to the value of goods supplied. The Petitioners undertook

to install plant on terms and conditions referred to in Agreement dated 6th November 2003. On the same day, another Agreement was executed between the parties which was titled as 'Wine Manufacturing and Distribution Agreement'.

3. According to the Petitioners, the Petitioners are entitled for the value of goods supplied under the first Agreement which is for setting up winery at Pune for which purpose, Petitioners supplied machinery and equipments as specified in the said Agreement.

4. On examining the materials on record, in particular, the averments in Para 14 of the Petition, there is no difficulty in accepting the stand of the Respondents that although there were two separate Agreements between the parties, it was one whole transaction. It is not in dispute that the parties were maintaining running account and the Respondents paid certain amounts from time to time. According to the Respondents, insofar as obligation under the first Agreement regarding supply of plant and equipments, the Respondents

have already discharged that liability. The claim of the Petitioners in the statutory notice is with reference to items falling under the Wine Manufacturing & Distribution Agreement. In other words, the amount claimed by the Petitioners in relation to the items referred to in Para 9 of the statutory notice, to the extent of over Rs.12,00,000/- (Rupees Twelve Lakhs), is covered by the second Agreement; whereas, the present Petition proceeds on the basis of liability of the Respondents to pay debt in respect of the goods supplied under the first Agreement. Insofar as the second Agreement between the parties, it is argued on behalf of the Respondents that in fact, the Petitioners have failed to discharge their obligation under that Agreement on specious and untenable plea.

5. Insofar as the stand taken on behalf of the Respondents that the Petitioners failed to install the plant within the specified time, the Petitioners may be justified in offering explanation relying on the correspondence between the parties that the Respondent Company was

responsible for said delay. The fact remains that there is counter claim between the parties. The Respondents are asserting that, in fact, the Respondent Company would be entitled for being compensated for the delay in installation of plant within the specified time. The Respondents are relying on Clause (6) of the Agreement to contend that the liability for such delayed installation of plant has been specified in the Agreement itself, which in fact has become payable to the Respondents by the Petitioners. The Respondents have also relied on correspondence relating back to July 2004 soon after the supply of plant to indicate that the Respondents had raised dispute regarding the quality of goods supplied. It is the case of the Respondents that the goods supplied were defective. In fact, the Petitioners have remedied that defect at a later point of time, as would appear from the correspondence entered into between the parties.

6. Suffice it to observe that several triable issues would arise for consideration in which case, it will not be appropriate for this Court to proceed on the assumption that there is crystalised

outstanding debt payable by the Respondents to the Petitioners. To put it differently, it is not a case as if the defence of the Respondents is frivolous or not bonafide.

7. Thus understood, it is not a case for admission of Petition. The Petition is disposed of with liberty to the Petitioners to take recourse to such other remedy as may be permissible by law. All questions in that behalf are left open.

A.M.KHANWILKAR, J.